

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK-----X
DALIA GINGER,

Plaintiff,

v.

SAGI GINGER,

Defendant/Third-Party
Plaintiff,

v.

ORLY GINGER,

Third-Party Defendant. :
-----X

KATHERINE B. FORREST, District Judge:

USDC SDNY
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DATE FILED: June 4, 2018

17-cv-8181 (KBF)

ORDER

The Court is in receipt of third-party defendant Orly Genger's ("Orly") motion to dismiss the amended third-party complaint for lack of subject matter jurisdiction. (ECF No. 64.) The Court has also reviewed defendant and third-party plaintiff Sagi Genger's ("Sagi") opposition at ECF No. 76.

The Court is interested in Orly's argument that there is no active dispute or "collision of interests" between plaintiff Dalia Genger ("Dalia") and Sagi, and therefore the parties to this action should be realigned under Maryland Cas. Co. v. W.R. Grace & Co., 23 F.3d 617 (2d Cir. 1993) and Indianapolis v. Chase Nat'l Bank, 314 U.S. 63 (1941). The Court notes that if Orly's argument is correct, the result would be full dismissal of this action (as to both Sagi and Orly) for lack of subject matter jurisdiction.

Although both Orly and Sagi have addressed this point in their briefs, the Court would benefit from more comprehensive briefing on the following issues:

- The scope of a district court's power to realign parties (including third-parties) for purposes of determining subject matter jurisdiction; and
- The nature and application of the "collision of interests" test in the Second Circuit, and what evidence is relevant to the Court's inquiry.

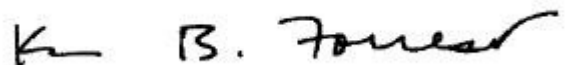
In drafting supplemental briefing on the aforementioned questions, Sagi is directed to provide information regarding whether he has or intends to make any good faith legal arguments in opposition to the amended complaint—e.g., whether he disputes that he is legally obligated to pay the requested amount (keeping in mind prior litigation between the parties, and putting aside whether Orly is subsequently required to indemnify him).

All interested parties are hereby directed to provide supplemental briefing on the issues raised herein not later than **Friday, June 22, 2018**. Upon receipt of the supplemental briefing, the Court will determine whether cross-replies are warranted.

Given the threshold nature of this jurisdictional question, the Court hereby ADJOURNS the initial pretrial conference currently scheduled for June 6, 2018. The Court will reschedule the initial pretrial conference as appropriate once this issue is resolved.

SO ORDERED.

Dated: New York, New York
June 4, 2018



KATHERINE B. FORREST
United States District Judge